

**Introduced by Senator Vidak**

February 3, 2015

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An act to amend Sections 3439, 3439.01, 3439.02, 3439.04, 3439.05, 3439.06, 3439.07, 3439.08, 3439.09, 3446, and 3447 of, to amend the heading of Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of, to amend the heading of Chapter 3 (commencing with Section 3445) of Title 2 of Part 2 of Division 4 of, to amend the heading of Title 2 (commencing with Section 3439) of Part 2 of Division 4 of, to amend and renumber Section 3439.12 of, and to amend, renumber, and add Sections 3439.10 and 3439.11 of, the Civil Code, to amend Sections 5420, 7420, 15905.02, 15911.27, 17704.03, 17711.08, and 18640 of the Corporations Code, to amend Sections 283 and 9653 of the Probate Code, and to amend Section 2104 of the Public Utilities Code, relating to civil law.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 161, as introduced, Vidak. Uniform Fraudulent Transfer Act.

The Uniform Fraudulent Transfer Act, based in part on the model Uniform Fraudulent Transfer Act, generally establishes the conditions under which a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, and sets forth the remedies of a creditor with respect to a fraudulent transfer or obligation, including, but not limited to, voiding the transfer. The act defines terms for its purposes.

This bill would rename the act the Uniform Voidable Transactions Act and would revise the act to adopt certain provisions proposed by the 2014 Uniform Voidable Transactions Act, which is based upon the Uniform Fraudulent Transfer Act, both of which were promulgated by the Uniform Law Commission. This bill would specify the burden of proof in making and defending a claim for relief and the basis for

determining the governing law for a claim for relief under the act. This bill would modify definitions applicable to the act, would remove a definition of insolvency relating to a partnership debtor, and would add new definitions, including, but not limited to, definitions of “record” and “sign.” This bill would replace the term “fraudulent” with the term “voidable,” as specified. This bill would provide that each “protected series” of a “series organization,” as those terms are defined, is treated as a person for purposes of the act. This bill would limit the applicability of the modifications to the act proposed by this bill to a right of action that accrued, transfer made, or obligation incurred on or after the effective date of this bill.

This bill would revise cross-references to the act and would make conforming changes to related provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The heading of Title 2 (commencing with Section  
2 3439) of Part 2 of Division 4 of the Civil Code is amended to read:

3  
4 TITLE 2. ~~FRAUDULENT INSTRUMENTS AND VOID AND~~  
5 ~~VOIDABLE TRANSFERS AND UNDERTAKINGS~~  
6

7 SEC. 2. The heading of Chapter 1 (commencing with Section  
8 3439) of Title 2 of Part 2 of Division 4 of the Civil Code is  
9 amended to read:

10  
11 CHAPTER 1. ~~UNIFORM-FRAUDULENT TRANSFER~~ VOIDABLE  
12 ~~TRANSACTIONS ACT~~  
13

14 SEC. 3. Section 3439 of the Civil Code is amended to read:

15 3439. This chapter may be cited as the Uniform-Fraudulent  
16 ~~Transfer Voidable Transactions Act.~~

17 SEC. 4. Section 3439.01 of the Civil Code is amended to read:  
18 3439.01. As used in this chapter the following definitions are  
19 applicable:

20 (a) “Asset” means property of a debtor, but the term does not  
21 ~~include~~; *include* the following:

22 (1) Property to the extent it is encumbered by a valid lien.

(2) Property to the extent it is generally exempt under nonbankruptcy law.

(3) An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(b) ~~“Claim”~~ *“Claim,” except as used in “claim for relief,”* means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(c) ~~“Creditor”~~ means a person ~~who~~ *that* has a claim, and includes an assignee of a general assignment for the benefit of creditors, as defined in Section 493.010 of the Code of Civil Procedure, of a debtor.

(d) ~~“Debt”~~ means liability on a claim.

(e) ~~“Debtor”~~ means a person ~~who~~ *that* is liable on a claim.

(f) *“Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.*

~~(f)~~

(g) ~~“Lien”~~ means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(h) *“Organization” means a person other than an individual.*

~~(g)~~

(i) ~~“Person”~~ means an individual, partnership, corporation, limited liability company, association, ~~organization~~, government or governmental subdivision, *instrumentality* or agency, business trust, estate, trust, ~~or any business or nonprofit entity, or other legal or commercial entity.~~

~~(h)~~

(j) ~~“Property”~~ means anything that may be the subject of ownership.

(k) *“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.*

(l) *“Sign” means, with present intent to authenticate or adopt a record, to either (1) execute or adopt a tangible symbol, or (2)*

1 *attach to or logically associate with the record an electronic*  
2 *symbol, sound, or process.*

3 (i)

4 (m) “Transfer” means every mode, direct or indirect, absolute  
5 or conditional, voluntary or involuntary, of disposing of or parting  
6 with an asset or an interest in an asset, and includes payment of  
7 money, release, lease, *license*, and creation of a lien or other  
8 encumbrance.

9 (j)

10 (n) “Valid lien” means a lien that is effective against the holder  
11 of a judicial lien subsequently obtained by legal or equitable  
12 process or proceedings.

13 SEC. 5. Section 3439.02 of the Civil Code is amended to read:

14 3439.02. (a) A debtor is insolvent if, at ~~a fair valuation~~,  
15 *valuation*, the sum of the debtor’s debts is greater than ~~all the sum~~  
16 of the debtor’s assets.

17 ~~(b) A debtor which is a partnership is insolvent if, at fair~~  
18 ~~valuations, the sum of the partnership’s debts is greater than the~~  
19 ~~aggregate of all of the partnership’s assets and the sum of the~~  
20 ~~excess of the value of each general partner’s nonpartnership assets~~  
21 ~~over the partner’s nonpartnership debts.~~

22 (e)

23 (b) A debtor ~~who~~ *that* is generally not paying ~~his or her the~~  
24 *debtor’s* debts as they become due *other than as a result of a bona*  
25 *fide dispute* is presumed to be insolvent. *The presumption imposes*  
26 *on the party against which the presumption is directed the burden*  
27 *of proving that the nonexistence of insolvency is more probable*  
28 *than its existence.*

29 (d)

30 (c) Assets under this section do not include property that has  
31 been transferred, concealed, or removed with intent to hinder,  
32 delay, or defraud creditors or that has been transferred in a manner  
33 making the transfer voidable under this chapter.

34 (e)

35 (d) Debts under this section do not include an obligation to the  
36 extent it is secured by a valid lien on property of the debtor not  
37 included as an asset.

38 SEC. 6. Section 3439.04 of the Civil Code is amended to read:

39 3439.04. (a) A transfer made or obligation incurred by a debtor  
40 ~~is fraudulent voidable~~ *voidable* as to a creditor, whether the creditor’s claim

1 arose before or after the transfer was made or the obligation was  
2 incurred, if the debtor made the transfer or incurred the obligation  
3 as follows:

4 (1) With actual intent to hinder, delay, or defraud any creditor  
5 of the debtor.

6 (2) Without receiving a reasonably equivalent value in exchange  
7 for the transfer or obligation, and the debtor either:

8 (A) Was engaged or was about to engage in a business or a  
9 transaction for which the remaining assets of the debtor were  
10 unreasonably small in relation to the business or transaction.

11 (B) Intended to incur, or believed or reasonably should have  
12 believed that ~~he or she~~ *the debtor* would incur, debts beyond ~~his~~  
13 ~~or her~~ *the debtor's* ability to pay as they became due.

14 (b) In determining actual intent under paragraph (1) of  
15 subdivision (a), consideration may be given, among other factors,  
16 to any or all of the following:

17 (1) Whether the transfer or obligation was to an insider.

18 (2) Whether the debtor retained possession or control of the  
19 property transferred after the transfer.

20 (3) Whether the transfer or obligation was disclosed or  
21 concealed.

22 (4) Whether before the transfer was made or obligation was  
23 incurred, the debtor had been sued or threatened with suit.

24 (5) Whether the transfer was of substantially all the debtor's  
25 assets.

26 (6) Whether the debtor absconded.

27 (7) Whether the debtor removed or concealed assets.

28 (8) Whether the value of the consideration received by the debtor  
29 was reasonably equivalent to the value of the asset transferred or  
30 the amount of the obligation incurred.

31 (9) Whether the debtor was insolvent or became insolvent  
32 shortly after the transfer was made or the obligation was incurred.

33 (10) Whether the transfer occurred shortly before or shortly  
34 after a substantial debt was incurred.

35 (11) Whether the debtor transferred the essential assets of the  
36 business to a ~~lienholder who~~ *lienor that* transferred the assets to  
37 an insider of the debtor.

38 ~~(c) The amendment to this section made during the 2004 portion~~  
39 ~~of the 2003-04 Regular Session of the Legislature, set forth in~~  
40 ~~subdivision (b), does not constitute a change in, but is declaratory~~

1 of existing law, and is not intended to affect any judicial decisions  
2 that have interpreted this chapter.

3 (c) A creditor making a claim for relief under subdivision (a)  
4 has the burden of proving the elements of the claim for relief by a  
5 preponderance of the evidence.

6 SEC. 7. Section 3439.05 of the Civil Code is amended to read:

7 3439.05. (a) A transfer made or obligation incurred by a debtor  
8 is ~~fraudulent~~ voidable as to a creditor whose claim arose before  
9 the transfer was made or the obligation was incurred if the debtor  
10 made the transfer or incurred the obligation without receiving a  
11 reasonably equivalent value in exchange for the transfer or  
12 obligation and the debtor was insolvent at that time or the debtor  
13 became insolvent as a result of the transfer or obligation.

14 (b) A creditor making a claim for relief under subdivision (a)  
15 has the burden of proving the elements of the claim for relief by a  
16 preponderance of the evidence.

17 SEC. 8. Section 3439.06 of the Civil Code is amended to read:

18 3439.06. For the purposes of this chapter:

19 (a) A transfer is made:

20 (1) With respect to an asset that is real property other than a  
21 fixture, but including the interest of a seller or purchaser under a  
22 contract for the sale of the asset, when the transfer is so far  
23 perfected that a good faith purchaser of the asset from the debtor  
24 against ~~whom~~ which applicable law permits the transfer to be  
25 perfected cannot acquire an interest in the asset that is superior to  
26 the interest of the transferee; and

27 (2) With respect to an asset that is not real property or that is a  
28 fixture, when the transfer is so far perfected that a creditor on a  
29 simple contract cannot acquire a judicial lien otherwise than under  
30 this chapter that is superior to the interest of the transferee.

31 (b) If applicable law permits the transfer to be perfected as  
32 provided in subdivision (a) and the transfer is not so perfected  
33 before the commencement of an action for relief under this chapter,  
34 the transfer is deemed made immediately before the  
35 commencement of the action.

36 (c) If applicable law does not permit the transfer to be perfected  
37 as provided in subdivision (a), the transfer is made when it becomes  
38 effective between the debtor and the transferee.

39 (d) A transfer is not made until the debtor has acquired rights  
40 in the asset transferred.

1 (e) An obligation is incurred:

2 (1) If oral, when it becomes effective between the parties; or

3 (2) If evidenced by a ~~writing~~, *record*, when the ~~writing executed~~  
4 *record signed* by the obligor is delivered to or for the benefit of  
5 the obligee.

6 SEC. 9. Section 3439.07 of the Civil Code is amended to read:

7 3439.07. (a) In an action for relief against a transfer or  
8 obligation under this chapter, a creditor, subject to the limitations  
9 in Section 3439.08, may obtain:

10 (1) Avoidance of the transfer or obligation to the extent  
11 necessary to satisfy the creditor's claim.

12 (2) An attachment or other provisional remedy against the asset  
13 transferred or ~~its proceeds~~ *other property of the transferee* in  
14 accordance with the procedures described in Title 6.5 (commencing  
15 with Section 481.010) of Part 2 of the Code of Civil ~~Procedure~~.  
16 *Procedure, or as may otherwise be available under applicable*  
17 *law*.

18 (3) Subject to applicable principles of equity and in accordance  
19 with applicable rules of civil procedure, the following:

20 (A) An injunction against further disposition by the debtor or  
21 a transferee, or both, of the asset transferred or ~~its proceeds~~ *other*  
22 *property of the transferee*.

23 (B) Appointment of a receiver to take charge of the asset  
24 transferred or ~~its proceeds~~ *other property of the transferee*.

25 (C) Any other relief the circumstances may require.

26 (b) If a creditor has commenced an action on a claim against  
27 the debtor, the creditor may attach the asset transferred or ~~its~~  
28 ~~proceeds~~ *other property of the transferee* if the remedy of  
29 attachment is available in the action under applicable law and the  
30 property is subject to attachment in the hands of the transferee  
31 under applicable law.

32 (c) If a creditor has obtained a judgment on a claim against the  
33 debtor, the creditor may levy execution on the asset transferred or  
34 its proceeds.

35 (d) A creditor who is an assignee of a general assignment for  
36 the benefit of creditors, as defined in Section 493.010 of the Code  
37 of Civil Procedure, may exercise any and all of the rights and  
38 remedies specified in this section if they are available to any one  
39 or more creditors of the assignor who are beneficiaries of the  
40 assignment, and, in that event (1) only to the extent the rights or

1 remedies are so available and (2) only for the benefit of those  
2 creditors whose rights are asserted by the assignee.

3 SEC. 10. Section 3439.08 of the Civil Code is amended to  
4 read:

5 3439.08. (a) A transfer or an obligation is not voidable under  
6 paragraph (1) of subdivision (a) of Section 3439.04, against a  
7 person ~~who~~ *that* took in good faith and for a reasonably equivalent  
8 value *given the debtor* or against any subsequent transferee or  
9 obligee.

10 (b) ~~Except as otherwise provided in this section, to~~ *To* the extent  
11 a transfer is ~~voidable~~ *avoidable* in an action by a creditor under  
12 paragraph (1) of subdivision (a) of Section 3439.07, ~~the creditor~~  
13 ~~may recover judgment for the value of the asset transferred, as~~  
14 ~~adjusted under subdivision (c), or the amount necessary to satisfy~~  
15 ~~the creditor's claim, whichever is less. The judgment may be~~  
16 ~~entered against the following:~~ *the following rules apply:*

17 *(1) Except as otherwise provided in this section, the creditor*  
18 *may recover judgment for the value of the asset transferred, as*  
19 *adjusted under subdivision (c), or the amount necessary to satisfy*  
20 *the creditor's claim, whichever is less. The judgment may be*  
21 *entered against the following:*

22 ~~(1)~~

23 (A) The first transferee of the asset or the person for whose  
24 benefit the transfer was made.

25 ~~(2) Any subsequent transferee other than a good faith transferee~~  
26 ~~who took for value or from any subsequent transferee.~~

27 (B) *An immediate or mediate transferee of the first transferee,*  
28 *other than either of the following:*

29 (i) *A good-faith transferee that took for value.*

30 (ii) *An immediate or mediate good-faith transferee of a person*  
31 *described in clause (i).*

32 (2) *Recovery pursuant to paragraph (1) of subdivision (a) or*  
33 *subdivision (b) of Section 3439.07 of or from the asset transferred*  
34 *or its proceeds, by levy or otherwise, is available only against a*  
35 *person described in subparagraph (A) or (B) of paragraph (1).*

36 (c) If the judgment under subdivision (b) is based upon the value  
37 of the asset transferred, the judgment shall be for an amount equal  
38 to the value of the asset at the time of the transfer, subject to  
39 adjustment as the equities may require.



(d) Notwithstanding voidability of a transfer or an obligation under this chapter, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to the following:

(1) A lien on or a right to retain ~~any~~ *an* interest in the asset transferred.

(2) Enforcement of ~~any~~ *an* obligation incurred.

(3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under paragraph (2) of subdivision (a) of Section 3439.04 or Section 3439.05 if the transfer results from *either of* the following:

(1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law.

(2) Enforcement of a lien in a noncollusive manner and in compliance with applicable law, including Division 9 (commencing with Section 9101) of the Commercial Code, other than a retention of collateral under Sections 9620 and 9621 of the Commercial Code and other than a voluntary transfer of the collateral by the debtor to the lienor in satisfaction of all or part of the secured obligation.

*(f) The following rules determine the burden of proving matters referred to in this section:*

*(1) A party that seeks to invoke subdivision (a), (d), or (e) has the burden of proving the applicability of that subdivision.*

*(2) Except as otherwise provided in paragraph (3) or (4), the creditor has the burden of proving each applicable element of subdivision (b) or (c).*

*(3) The transferee has the burden of proving the applicability to the transferee of subparagraph (B) of paragraph (1) of subdivision (b).*

*(4) A party that seeks adjustment under subdivision (c) has the burden of proving the adjustment.*

*(g) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.*

SEC. 11. Section 3439.09 of the Civil Code is amended to read:

3439.09. A cause of action with respect to a ~~fraudulent~~ transfer or obligation under this chapter is extinguished unless action is brought pursuant to subdivision (a) of Section 3439.07 or levy made as provided in subdivision (b) or (c) of Section 3439.07:

(a) Under paragraph (1) of subdivision (a) of Section 3439.04, ~~within not later than~~ four years after the transfer was made or the obligation was incurred or, if later, ~~within not later than~~ one year after the transfer or obligation was or could reasonably have been discovered by the claimant.

(b) Under paragraph (2) of subdivision (a) of Section 3439.04 or Section 3439.05, ~~within not later than~~ four years after the transfer was made or the obligation was incurred.

(c) Notwithstanding any other provision of law, a cause of action *under this chapter* with respect to a ~~fraudulent~~ transfer or obligation is extinguished if no action is brought or levy made within seven years after the transfer was made or the obligation was incurred.

SEC. 12. Section 3439.10 of the Civil Code is amended and renumbered to read:

~~3439.10.~~

*3439.12.* Unless displaced by the provisions of this chapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

SEC. 13. Section 3439.10 is added to the Civil Code, to read:

3439.10. (a) In this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(b) A claim in the nature of a claim under this chapter is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

SEC. 14. Section 3439.11 of the Civil Code is amended and renumbered to read:

~~3439.11.~~

*3439.13.* This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

SEC. 15. Section 3439.11 is added to the Civil Code, to read:

1 3439.11. (a) For purposes of this section, the following  
2 definitions apply:

3 (1) “Protected series” means an arrangement, however  
4 denominated, created by a series organization that, pursuant to the  
5 law under which the series organization is organized, has the  
6 characteristics set forth in paragraph (2).

7 (2) “Series organization” means an organization that, pursuant  
8 to the law under which it is organized, has the following  
9 characteristics:

10 (A) The organic record of the organization provides for creation  
11 by the organization of one or more protected series, however  
12 denominated, with respect to specified property of the organization,  
13 and for records to be maintained for each protected series that  
14 identify the property of or associated with the protected series.

15 (B) Debt incurred or existing with respect to the activities of,  
16 or property of, or associated with, a particular protected series is  
17 enforceable against the property of or associated with the protected  
18 series only, and not against the property of or associated with the  
19 organization or other protected series of the organization.

20 (C) Debt incurred or existing with respect to the activities or  
21 property of the organization is enforceable against the property of  
22 the organization only, and not against the property of or associated  
23 with a protected series of the organization.

24 (b) A series organization and each protected series of the  
25 organization is a separate person for purposes of this chapter, even  
26 if for other purposes a protected series is not a person separate  
27 from the organization or other protected series of the organization.

28 SEC. 16. Section 3439.12 of the Civil Code is amended and  
29 renumbered to read:

30 ~~3439.12.~~

31 *3439.14. (a) The changes to this chapter made by the act*  
32 *adding this subdivision apply only to a right of action that accrued,*  
33 *transfer made, or obligation incurred, on or after the effective date*  
34 *of that act.*

35 (b) This chapter, and the other changes in the law made by  
36 Chapter 383 of the Statutes of 1986, apply only to transfers made  
37 or obligations incurred *before the effective date of the act that*  
38 *added subdivision (a) and on or after January 1, 1987; and, as*  
39 *1987. As to transfers made or obligations incurred prior to that*  
40 *date, January 1, 1987, the law in effect at the time the transfer was*

1 made or the obligation was incurred shall apply. ~~The provisions~~  
2 ~~of this chapter, insofar as they are substantially the same as the~~  
3 ~~provisions of Chapter 1 (commencing with Section 3439) of Title~~  
4 ~~2 of Part 2 of Division 4, which was repealed by Chapter 383 of~~  
5 ~~the Statutes of 1986, shall be construed as restatements and~~  
6 ~~continuations, and not as new enactments.~~

7 *(c) Section 3439.06 shall determine the date that a transfer was*  
8 *made or obligation incurred.*

9 *(d) The provisions of this chapter, insofar as they are*  
10 *substantially the same as the provisions of this chapter in effect*  
11 *on the effective date as the act adding subdivision (a), shall be*  
12 *construed as restatements and continuations, and not as new*  
13 *enactments.*

14 SEC. 17. The heading of Chapter 3 (commencing with Section  
15 3445) of Title 2 of Part 2 of Division 4 of the Civil Code is  
16 amended to read:

17  
18 CHAPTER 3. UNDERTAKING IN ~~FRAUDULENT~~ VOIDABLE  
19 TRANSFER ACTION  
20

21 SEC. 18. Section 3446 of the Civil Code is amended to read:

22 3446. (a) In an action by a creditor for relief against a transfer  
23 or obligation under Chapter 1 (commencing with Section 3439)  
24 of Title 2 of Part 2 of Division 4 on the ground that the transfer or  
25 obligation is ~~fraudulent~~ voidable as to the creditor, the transferee  
26 may give an undertaking as provided in this chapter.

27 (b) If an undertaking is given as provided in this chapter, the  
28 transferee may sell, encumber, transfer, convey, mortgage, pledge,  
29 or otherwise dispose of the property or obligation, or a part thereof,  
30 and the purchaser, encumbrancer, transferee, mortgagee, grantee,  
31 or pledgee of the property or obligation takes, owns, holds, and  
32 possesses the property or obligation unaffected by the action and  
33 any judgment that is rendered in the action.

34 SEC. 19. Section 3447 of the Civil Code is amended to read:

35 3447. The undertaking shall be conditioned that, if it is  
36 determined in the action that the transfer or obligation was  
37 ~~fraudulent~~ voidable as to the creditor, the transferee will pay to  
38 the creditor the lesser of the following amounts:

39 (a) The value of the property or obligation as estimated in the  
40 undertaking.

1 (b) The amount determined in the action to be due and owing  
2 to the creditor by the person who transferred the property or  
3 incurred the obligation.

4 SEC. 20. Section 5420 of the Corporations Code is amended  
5 to read:

6 5420. (a) Any person who receives any distribution is liable  
7 to the corporation for the amount so received by such person with  
8 interest thereon at the legal rate on judgments until paid.

9 (b) Suit may be brought in the name of a corporation by a  
10 creditor, a director, the Attorney General, or, subject to meeting  
11 the requirements of Section 5710, a member. In any such action  
12 in addition to the remedy provided in subdivision (a), the court  
13 may award punitive damages for the benefit of the corporation  
14 against any director, officer, member or other person who with  
15 intent to defraud the corporation caused, received or aided and  
16 abetted in the making of any distribution.

17 (c) Any person sued under this section may implead all other  
18 persons liable under this section and may in the absence of fraud  
19 by ~~such a~~ moving party compel contribution, either in that action  
20 or in an independent action against persons not joined in the action.

21 ~~(d) Nothing contained in this~~ *This section affects shall not affect*  
22 *any liability which any person may have under Sections 3439 to*  
23 *3439.12, inclusive, of the Civil Code; the Uniform Voidable*  
24 *Transactions Act (Chapter 1 (commencing with Section 3439) of*  
25 *Title 2 of Part 2 of Division 4 of the Civil Code).*

26 SEC. 21. Section 7420 of the Corporations Code is amended  
27 to read:

28 7420. (a) Any person who with knowledge of facts indicating  
29 the impropriety thereof receives any distribution, including a  
30 payment in redemption of a membership, prohibited by this chapter  
31 is liable to the corporation for the amount so received by the person  
32 with interest thereon at the legal rate on judgments until paid.

33 (b) Any person who with knowledge of facts indicating the  
34 impropriety thereof receives any distribution, including a payment  
35 in redemption of a membership, prohibited by this chapter is liable  
36 to the corporation for the benefit of the head organization, or of  
37 all of the creditors entitled to institute an action under subdivision  
38 (c), for the amount so received by the person with interest thereon  
39 at the legal rate on judgments until paid, but not exceeding the  
40 obligations of the corporation owed to the head organization at the

1 time of the violation, or the liabilities of the corporation owed to  
2 nonconsenting creditors at the time of the violation, as the case  
3 may be.

4 (c) Suit may be brought in the name of the corporation to enforce  
5 the liability (1) to creditors arising under subdivision (b) for a  
6 violation of Section 7411 or 7412 against any or all persons liable  
7 by any one or more creditors of the corporation whose debts or  
8 claims arose prior to the time of the distribution and who have not  
9 consented thereto, whether or not they have reduced their claims  
10 to judgment, or (2) to the head organization arising under  
11 subdivision (b) for a violation of Section 7413 against any or all  
12 persons liable by any head organization which pursuant to the  
13 corporation's articles is entitled to a distribution of assets upon  
14 dissolution.

15 (d) Any person sued under subdivision (b) may implead all other  
16 persons liable under subdivision (b) and may in the absence of  
17 fraud by the moving party compel contribution, either in that action  
18 or in an independent action against persons not joined in that action.

19 (e) Nothing contained in this section affects any liability which  
20 any person may have under ~~Sections 3439 to 3439.12, inclusive,~~  
21 ~~of the Civil Code.~~ *the Uniform Voidable Transactions Act (Chapter*  
22 *1 (commencing with Section 3439) of Title 2 of Part 2 of Division*  
23 *4 of the Civil Code).*

24 SEC. 22. Section 15905.02 of the Corporations Code is  
25 amended to read:

26 15905.02. (a) A partner's obligation to contribute money or  
27 other property or other benefit to, or to perform services for, a  
28 limited partnership is not excused by the partner's death, disability,  
29 or other inability to perform personally.

30 (b) If a partner does not make a promised nonmonetary  
31 contribution, the partner is obligated at the option of the limited  
32 partnership to contribute money equal to the value of that portion,  
33 as stated in the required information, of the stated contribution  
34 which has not been made.

35 (c) The obligation of a partner to make a contribution or return  
36 money or other property paid or distributed in violation of this  
37 chapter may be compromised only by consent of all partners. A  
38 creditor of a limited partnership which extends credit or otherwise  
39 acts in reliance on an obligation described in subdivision (a),

1 without notice of any compromise under this subdivision, may  
2 enforce the original obligation.

3 (d) A partnership agreement may provide that the interest of a  
4 partner who fails to make any contribution or other payment that  
5 the partner is required to make will be subject to specific remedies  
6 for, or specific consequences of, the failure. A provision shall be  
7 enforceable in accordance with its terms unless the partner seeking  
8 to invalidate the provision establishes that the provision was  
9 unreasonable under the circumstances existing at the time the  
10 agreement was made. The specific remedies or consequences may  
11 include loss of voting, approval, or other rights, loss of the partner's  
12 ability to actively participate in the management and operations  
13 of the partnership, liquidated damages, or a reduction of the  
14 defaulting partner's economic rights. The reduction of the  
15 defaulting partner's economic rights may include one or more of  
16 the following provisions:

17 (1) Diluting, reducing or eliminating the defaulting partner's  
18 proportionate interest in the partnership.

19 (2) Subordinating the defaulting partner's interest in the  
20 partnership to that of nondefaulting partners.

21 (3) Permitting a forced sale of the partnership interest.

22 (4) Permitting the lending or contribution by other partners of  
23 the amount necessary to meet the defaulting partner's commitment.

24 (5) Adjusting the interest rates or other rates of return, preferred,  
25 priority, or otherwise, with respect to contributions by or capital  
26 accounts of the other partners.

27 (6) Fixing the value of the defaulting partner's interest in the  
28 partnership by appraisal, formula and redemption, or sale of the  
29 defaulting partner's interest in the partnership at a percentage of  
30 that value.

31 (7) Nothing in this section shall be construed to affect the rights  
32 of third-party creditors of the partnership to seek equitable remedies  
33 nor any rights existing under the Uniform ~~Fraudulent Transfer~~  
34 *Voidable Transactions* Act (Chapter 1 (commencing with Section  
35 3439) of Title 2 of Part 2 of Division 4 of the Civil Code).

36 SEC. 23. Section 15911.27 of the Corporations Code is  
37 amended to read:

38 15911.27. To the extent that the payment to dissenting limited  
39 partners of the fair market value of their dissenting interests would  
40 require the dissenting limited partners to return such payment or

1 a portion thereof by reason of Section 15905.09 or the Uniform  
2 ~~Fraudulent-Transfer~~ *Voidable Transactions* Act (Chapter 1  
3 (commencing with Section 3439) of Title 2 of Part 2 of Division  
4 4 of the Civil Code), then that payment or portion thereof shall not  
5 be made and the dissenting limited partners shall become creditors  
6 of the limited partnership for the amount not paid, together with  
7 interest thereon at the legal rate on judgments until the date of  
8 payment, but subordinate to all other creditors in any proceeding  
9 relating to the winding up and dissolution of the limited  
10 partnership, such debt to be payable when permissible.

11 SEC. 24. Section 17704.03 of the Corporations Code is  
12 amended to read:

13 17704.03. (a) A person's obligation to make a contribution to  
14 a limited liability company is not excused by the person's death,  
15 disability, or other inability to perform personally. If a person does  
16 not make a required contribution, the person or the person's estate  
17 is obligated to contribute money equal to the value of the part of  
18 the contribution that has not been made, at the option of the limited  
19 liability company.

20 (b) The obligation of a member to make a contribution to a  
21 limited liability company may be compromised only by consent  
22 of all the members. A conditional obligation of a member to make  
23 a contribution to a limited liability company shall not be enforced  
24 unless the conditions of the obligation have been satisfied or  
25 waived as to or by that member. Conditional obligations include  
26 contributions payable upon a discretionary call of a limited liability  
27 company before the time the call occurs.

28 (c) A creditor of a limited liability company that extends credit  
29 or otherwise acts in reliance on an obligation described in  
30 subdivision (a) may enforce the obligation.

31 (d) Nothing in this section shall be construed to affect the rights  
32 of third-party creditors of the limited liability company to seek  
33 equitable remedies or any rights existing under the Uniform  
34 ~~Fraudulent-Transfer~~ *Voidable Transactions* Act (Chapter 1  
35 (commencing with Section 3439) of Title 2 of Part 2 of Division  
36 4 of the Civil Code).

37 SEC. 25. Section 17711.08 of the Corporations Code is  
38 amended to read:

39 17711.08. To the extent that the payment to dissenting members  
40 of the fair market value of their dissenting interests would require



1 the dissenting members to return payment or a portion of the  
2 payment by reason of Section 17711.09 or the Uniform ~~Fraudulent~~  
3 ~~Transfer~~ *Voidable Transactions* Act (Chapter 1 (commencing with  
4 Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code),  
5 then that payment or portion thereof shall not be made and the  
6 dissenting members shall become creditors of the limited liability  
7 company for the amount not paid, together with interest thereon  
8 at the legal rate on judgments until the date of payment, but  
9 subordinate to all other creditors in any proceeding relating to the  
10 winding up and dissolution of the limited liability company, such  
11 debt to be payable when permissible.

12 SEC. 26. Section 18640 of the Corporations Code is amended  
13 to read:

14 18640. Nothing in this chapter limits application of the Uniform  
15 ~~Fraudulent-Transfer~~ *Voidable Transactions* Act (Chapter 1  
16 (commencing with Section 3439) of Title 2 of Part 2 of Division  
17 4 of the Civil Code).

18 SEC. 27. Section 283 of the Probate Code is amended to read:

19 283. A disclaimer is not a ~~fraudulent~~ *voidable* transfer by the  
20 beneficiary under ~~Chapter~~ *the Uniform Voidable Transactions Act*  
21 *(Chapter 1 (commencing with Section 3439) of Title 2 of Part 2*  
22 *of Division 4 of the Civil Code: Code).*

23 SEC. 28. Section 9653 of the Probate Code is amended to read:

24 9653. (a) On application of a creditor of the decedent or the  
25 estate, the personal representative shall commence and prosecute  
26 an action for the recovery of real or personal property of the  
27 decedent for the benefit of creditors if the personal representative  
28 has insufficient assets to pay creditors and the decedent during  
29 lifetime did any of the following with respect to the property:

30 (1) Made a conveyance of the property, or any right or interest  
31 in the property, that is ~~fraudulent~~ *voidable* as to creditors under  
32 the Uniform ~~Fraudulent-Transfer~~ *Voidable Transactions* Act  
33 (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2  
34 of Division 4 of the Civil Code).

35 (2) Made a gift of the property in view of impending death.

36 (3) Made a direction to transfer a vehicle, undocumented vessel,  
37 manufactured home, mobilehome, commercial coach, truck camper,  
38 or floating home to a designated beneficiary on the decedent's  
39 death pursuant to Section 18102.2 of the Health and Safety Code,

1 or Section 5910.5 or 9916.5 of the Vehicle Code, and the property  
2 has been transferred as directed.

3 (b) A creditor making application under this section shall pay  
4 such part of the costs and expenses of the suit and attorney's fees,  
5 or give an undertaking to the personal representative for that  
6 purpose, as the personal representative and the creditor agree, or,  
7 absent an agreement, as the court or judge orders.

8 (c) The property recovered under this section shall be sold for  
9 the payment of debts in the same manner as if the decedent had  
10 died seized or possessed of the property. The proceeds of the sale  
11 shall be applied first to payment of the costs and expenses of suit,  
12 including attorney's fees, and then to payment of the debts of the  
13 decedent in the same manner as other property in possession of  
14 the personal representative. After all the debts of the decedent have  
15 been paid, the remainder of the proceeds shall be paid to the person  
16 from whom the property was recovered. The property may be sold  
17 in its entirety or in such portion as necessary to pay the debts.

18 SEC. 29. Section 2104 of the Public Utilities Code is amended  
19 to read:

20 2104. (a) Except as provided by Sections 2100 and 2107.5,  
21 actions to recover penalties under this part shall be brought in the  
22 name of the people of the State of California, in the superior court  
23 in and for the county, or city and county, in which the cause or  
24 some part thereof arose, or in which the corporation complained  
25 of has its principal place of business, or in which the person  
26 complained of resides. The action shall be commenced and  
27 prosecuted to final judgment by the attorney or agent of the  
28 commission. All fines and penalties may be sued for and recovered.  
29 The commission may enjoin the sale of a public utility's or  
30 common carrier's assets to satisfy unpaid fines and penalties. The  
31 commission may use any of the remedies afforded to a creditor  
32 under the Uniform ~~Fraudulent Transfer~~ *Voidable Transactions* Act  
33 (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2  
34 of Division 4 of the Civil Code). Respondents who fraudulently  
35 transfer assets to avoid paying commission-imposed fines or  
36 penalties are subject to prosecution under Sections 154, 531, and  
37 531a of the Penal Code. In all of these actions, the procedure and  
38 rules of evidence shall be the same as in ordinary civil actions,  
39 except for prosecutions under the Penal Code or as otherwise herein  
40 provided. All fines and penalties recovered by the state in any

1 action, together with the costs thereof, shall be paid into the State  
2 Treasury to the credit of the General Fund. Any action may be  
3 compromised or discontinued on application of the commission  
4 upon the terms the court approves and orders.

5 (b) This section shall become operative on January 1, 2014.

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